UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

RICHARD T. COLE,

     Plaintiff in 2:15cv419,
     Defendant in 2:15cv479,

v.   CIVIL ACTION NOS. 2:15cv419
                                                         & 2:15cv479
WADID DAOUD,

and

DAOUD INVESTMENT HOLDINGS, INC.,

     Defendants in 2:15cv419,
     Plaintiffs in 2:15cv479.

MEMORANDUM ORDER

This matter comes before the court on several motions in two related cases. In case number 2:15cv419 ("419"), on April 18, 2016, the 419 Defendants, Wadid Daoud ("Daoud") and Daoud Investment Holdings ("DIH"), filed a Motion to Strike and accompanying Memorandum in Support, ECF Nos. 44, 45, and a Motion to Dismiss the Amended Complaint and accompanying Memorandum in Support. ECF Nos. 46, 47. On May 13, 2016, the 419 Plaintiff, Richard T. Cole ("Cole"), filed his Responses, ECF Nos. 51, 52, and on May 19, 2016, Daoud and DIH filed their Replies. ECF Nos. 53, 54.

In case number 2:15cv479 ("479"), on April 18, 2016, the 479 Plaintiffs, Daoud and DIH, filed a Motion to Dismiss the Amended Counterclaim and accompanying Memorandum in Support. ECF

Nos. 38, 39. On May 13, 2016, the 479 Defendant, Cole, filed his Response, ECF No. 42, and on May 19, 2016, Daoud and DIH filed their Reply. ECF No. 43.

On May 20, 2016, this court consolidated the 419 and 479 cases for all purposes under the 419 case number. ECF No. 55 (419 case); ECF No. 44 (479 case). Thereafter, on the same day, this court referred the above motions to United States Magistrate Judge Douglas E. Miller, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned district judge proposed findings of fact, if applicable, and recommendations for the disposition of these motions. ECF No. 56 (419 case).

The Magistrate Judge filed the Report and Recommendation ("R&R") on July 6, 2016. ECF No. 57 (419 case). For the 419 case, the Magistrate Judge recommended denying Daoud and DIH's Motion to Strike (ECF No. 44), and granting in part and denying in part the Motion to Dismiss the Amended Complaint (ECF No. 46). Specifically, the Magistrate Judge recommended granting the Motion to Dismiss the Amended Complaint as to Counts III and IV, and denying it as to Count II. For the 479 case, the Magistrate Judge recommended granting Daoud and DIH's Motion to Dismiss the Amended Counterclaim (ECF No. 38), and dismissing Cole's entire Amended Counterclaim without prejudice, as

cumulative of the claims already set forth in consolidated case number 2:15cv419. By copy of the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. See R&R at 34. Cole filed Objections on July 18, 2016, ECF No. 58 (419 case), and Daoud and DIH filed a Response on July 28, 2016. ECF No. 59 (419 case).

The court, having examined the Objections filed by Cole to the R&R, and having made de novo findings with respect thereto, does hereby adopt and approve in full the findings and recommendations set forth in the R&R of the United States Magistrate Judge filed on July 6, 2016. Accordingly, the court **DENIES** Daoud and DIH's Motion to Strike, ECF No. 44 (419 case); **GRANTS IN PART**, as to Counts III and IV, and **DENIES IN PART**, as to Count II, Daoud and DIH's Motion to Dismiss the Amended Complaint, ECF No. 46 (419 case); and **GRANTS** Daoud and DIH's Motion to Dismiss the Amended Counterclaim, ECF No. 38 (479 case), and **DISMISSES**, without prejudice, the entire Amended Counterclaim. Accordingly, the case will proceed on Counts I and II of the Amended Complaint in the 419 case, and on all counts of the Amended Complaint in the 479 case. Pursuant to this court's Consolidation Order of May 20, 2016, all filings will continue to be made in the 419 case.

The Clerk is **DIRECTED** to send a copy of this Memorandum Order to counsel for all parties.

IT IS SO ORDERED.

/s/

Rebecca Beach Smith
Chief Judge

REBECCA BEACH SMITH
CHIEF JUDGE

August 1 , 2016